"goods used as a material", the word "materials" being employed in the definition of "goods" is perhaps rather unfortunate.

The wording of the section of the English Act corresponding to section 3 was adopted, apparently without regard to the different definition of the word "goods".

However it seems to me that newsprint is used as a material from which newspapers are produced and it is a component part of a newspaper and therefore the person carrying on business in the Colony as a seller of newspapers produced by him must insure under the Ordinance any materials, commodities or articles used as material from which newspapers are produced or used as a component part of newspapers e.g. newsprint.

It is not possible to dissociate the paper from the news imprinted thereon. The very term "newspaper" connotes the employment of both news and paper in order to the production of the whole.

Newsprint would not come within subsection (b) of section 3 (1) in so far as the Straits Echo Press Ltd. is concerned, as it is not goods of the description which the Straits Echo Press Ltd. sells viz. newspapers.

Even were I not satisfied that the language of the Ordinance covers the case in question without ambiguity, I should still be prepared to hold that, having regard to the judgments in the cases of *The Noordam* (supra), *Pearks' Dairies v. Tottenham Food Control Committee* (supra) and *Mee v. Toone* (supra), the language of the Ordinance legitimately may be interpreted with reference to its general scope, without drawing very nice distinctions, inasmuch as the Ordinance is in its nature emergency legislation, designed, not for the good of the individual but for that of the population as a whole.

To answer specifically the questions formulated in the originating summons:—

(1) The plaintiff does not sell newsprint as such.

(2) Newsprint held solely for the purpose of publishing a newspaper is goods insurable under the Ordinance within the meaning of section 3 (1) (a) (ii) thereof but not within the meaning of section 3 (1) (b) thereof.

(3) The plaintiff is liable to insure the said newsprint under the War Risks (Goods) Insurance Ordinance, 1941.

Order Accordingly.

KOH SEK LIM vs. MARRIOTT.

[Original Civil Jurisdiction (Aitken, J.), May 9, 1941]

An example of a case in which a Plaintiff who occasionally lent money on interest was held not to be a moneylender within the meaning of the Moneylenders Ordinance.

J. K. Gale for plaintiff.

V. J. Mendis for defendant.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Aitken, J.—The Statement of Claim in this case reads as follows:—

"The Plaintiff's claim is for the sum of $1,046.58 being the amount of principal and interest due from the Defendant to the Plaintiff by virtue of a Promissory Note made by the Defendant in favour of the Plaintiff and dated the 7th May 1940 whereby the Defendant promised to pay the sum of $1,250.00 (being as to $1,000.00 principal and $250.00 interest) by eight equal monthly instalments. The said Promissory Note contained a proviso that in default of payment of any instalment when due and should such default continue for a period of ten days then on demand the whole of the instalments should become immediately due and payable. The first instalment is in default for over ten days and demand has been made for the whole amount due.

PARTICULARS.

7.5.1940.	To principal due	$1,000.00
7.5.1940 to 31.7.1940.	„ interest on $1,000.00 at 20% per annum	46.58
		$1,046.58

In the alternative the Plaintiff claims the said sum of $1,046.58 as money lent by the Plaintiff to the Defendant with agreed interest thereon.

And the Plaintiff further claims interest on the said sum of $1,000.00 from the 1st August 1940 until payment or Judgment at 20% per annum."

There is no dispute about the facts out of which this claim arises.

On the 15th of January, 1940, the Plaintiff lent the Defendant $500, and the Defendant, along with another person, signed a promissory note for $636, to be paid by six equal consecutive monthly instalments of $106. By way of security the Defendant gave the Plaintiff a note declaring that the former had sold his Motor Boat to the latter for $600.

The Defendant paid the February, March and April 1940 instalments on this promissory note, but wrote to the Plaintiff an undated letter at the beginning of May, 1940, stating that he would not be able to pay that month's instalment as it fell due.

He then approached the Plaintiff for a further loan, and on the 7th of May, 1940, the Plaintiff lent the Defendant an additional $700, in consideration of which the Defendant signed a promissory note for $1,250 (being $1,000 for principal and $250 for interest thereon) which amount he promised to pay by seven equal consecutive monthly instalments of $150 and a final instalment of $200 next month. Should any one instalment remain unpaid for ten days, then the whole amount still due was to become payable on demand. By way of security the note about the Defendant's motor boat was left with the Plaintiff, and the Defendant insured his life for $10,000 with the Great Eastern Life Assurance Co., and assigned the policy to the Plaintiff.

Upon the execution of this promissory note of the 7th of May, 1940, the Plaintiff handed the first promissory note of the 15th of January, 1940 to the Defendant, and both parties regarded it as cancelled since the $300 which remained due thereon had been included in the new promissory note.

The Defendant failed to pay the June and July, 1940 instalments on the new promissory note as they fell due, and on the 26th of July, 1940, the Plaintiff's Solicitors wrote to the Defendant mentioning the new promissory note, and that default had been made in payment of the instalment due on the 1st of the previous month. Their letter concluded as follows:—

"We are instructed by our client to demand from you payment of the sum of $1,000.00 plus interest up to date, and to warn you that, if you make default in payment within three days, legal proceedings will be commenced against you for the recovery of the same without further notice."

As this letter failed to produce any tangible effect the specially indorsed writ was issued herein on the 1st of August, 1940, and I have already set out the statement of claim herein. Leave to defend was given, and the only defence set up is the plea that the Plaintiff was a moneylender within the meaning of the Moneylenders Ordinance at the times when he lent the Defendant the moneys in respect of which he was suing. It was further alleged that "no note or memorandum in writing showing the true facts of the transaction which took place on the 7th of May, 1940, was ever made", and therefore the promissory note sued upon was unenforceable and the Plaintiff was not entitled to enforce any claim in respect thereof.

When the case came on before me for trial on the 1st of May, 1941, counsel on both sides assured me that there is only one issue for me to decide, and that is, whether or not the Plaintiff was a moneylender within the meaning of the Ordinance at the times when he lent the $500, and then the $700, to the Defendant. That is certainly the main issue in this case, but a little reflection has satisfied me that the Plaintiff is not entitled to judgment for the full amount he claims should that issue be decided in his favour.

The only evidence led before me was that of the parties themselves, and as the Defendant could only speak of his own transactions with the Plaintiff, I have no independent information as to the Plaintiff's moneylending transactions with other persons. Had the clerk named Mohamed Arip, who introduced the Defendant to the Plaintiff, been called as a witness, a little more illumination might have been thrown on at least one aspect of the question.

Now, subject to certain exceptions, only one of which has any bearing on this case, section 3 of the Ordinance provides that "any person who lends money at interest or who lends a sum of money in consideration of a larger sum being repaid shall be presumed, until the contrary be proved, to be a moneylender". The practical result of this presumption appears to be this:—that every person who sues to recover money lent at interest, and who is met by the defence that he is a moneylender within the meaning of the Ordinance but has not complied with the provisions of section 4 thereof, must prove that he is not a moneylender before he can recover anything.

I have therefore addressed my mind to the question as to whether, or not, the Plaintiff was a moneylender within the meaning of the Ordinance at the relevant times, in accordance with this view on the onus of proof; and I will proceed to indicate my impressions of the evidence.

The Plaintiff struck me as a honest witness, though his memory is probably not very sound—which is not altogether surprising in a Chinese man 72 years of age. After hearing all that he said I felt satisfied that he is quite indifferent to moneylending as a means of making money, though he has had ample means and opportunities for making money in that way; and it struck me that he would be genuinely distressed if he was held to be a professional moneylender, quite apart from any immediate monetary loss which might ensue.

I was also satisfied that his moneylending transactions have hitherto been few in number, and usually far between in point of time. Moreover, I felt confident that he has never advertised or announced himself, or held himself out in any way, as carrying on the business of a moneylender.

On the other hand I have come to the conclusion that the Plaintiff, at any rate in the past, has not been altogether averse to lending money at interest, even to strangers, provided that they approached him in the right way and appeared to be eligible for that purpose. In the case of strangers the Plaintiff seems generally to have required some security, and his loan to Mr. and Mrs. Fernandez appears to have been a perfectly genuine mortgage of immoveable property a transaction which comes within exception (e) of the Ordinance's definition of moneylender. Subject to these comments I accept the Plaintiff's statement that in the case of needy relatives, and even in one or two recent cases of loans to neighbours and strangers, he has lent the money without security and either at moderate rates of interest or without any interest at all.

It must, however, be admitted that in regard to his transactions with the Defendant, the Plaintiff sought to charge very high rates of interest indeed, and took care to exact what he no doubt thought would prove to be fairly adequate security.

Lastly, I have not lost sight of the fact that the Defendant asked his clerk, named Mohamed Arip, to find some one who would lend him (the Defendant) some money, and that, as a result of that request, Mohamed Arip introduced the Defendant to the Plaintiff three days or so later. This does seem to indicate that the Plaintiff was known to some people, probably in the neighbourhood of his house and estate, as a man both able and willing to lend money at interest. But in a place like Singapore Island I feel reasonably confident that any non-European who is known to be possessed of ample means and to be approachable, is frequently in receipt of appeals for financial assistance from others in less fortunate circumstances.

To summarise the impressions which I have formed on all the evidence before me I say this:—During the last few years the Plaintiff has occasionally lent money, and on one or two of those occasions he has charged rates of interest which are either high or at any rate remunerative. These loans have not been confined to relatives or near neighbours, though I feel reasonably confident that most of them have been granted to such persons. I accept the Plaintiff's statements that he regards moneylending with indifference, and has never sought to make any considerable or regular income by such means.

Finally, I am satisfied that the Plaintiff's money-lending transactions have been entirely without either system or continuity, and that he has never advertised, or announced, or held himself out in any way as carrying on a moneylending business.

Upon this summary of the impressions made upon me by the evidence in this case I must, I think, hold that the Plaintiff has proved that he is not a moneylender within the meaning of the Ordinance. The authorities cited to me by both sides—and one or two others—have been considered by me, and I have certainly found them helpful. But in each case it is always a question of fact whether the lender was carrying on the business of moneylending, and none of the cases to which my attention has been directed or attracted exhibits facts in any way closely resembling the facts of this case. What I have endeavoured to do is to apply the principles enunciated in those cases to the facts in this one, with the result that, in my opinion, the Plaintiff was not a moneylender within the meaning of the Ordinance either on the 15th of January, 1940, when he made the first loan to the Defendant, or on the 7th of May, 1940, when he made the second one.

Having found, as a fact, that the Plaintiff was not a moneylender within the meaning of the Ordinance, it follows that he is entitled to judgment against the Defendant, but not necessarily for the full amount claimed. This case is by no means as simple as that, and the provisions of section 10, sub-s. 4 of the Ordinance must be studied and applied.

Now s. 10, sub-s. 4 provides that no person, who is not a moneylender within the meaning of the Ordinance, shall, in respect of money lent by him, recover in excess of the money lent by him any sum greater than an amount equal to simple interest at the rate of 20 per centum per annum on the money actually lent.

In this case the Plaintiff is claiming $1,000 as money lent and interest thereon at 20 per centum per annum for the period May 7th, 1940, up to the date of judgment. The fact is, however, that the total amount outstanding on the 7th of May, 1940, was only $900 because the $100 capitalised interest on the first loan of the 15h of January, 1940, had been taken once and added on to the second loan. In other words, the total amount received by the Defendant from the Plaintiff by way of loan was $900 only.

The result is that, in my opinion, the Plaintiff is entitled to judgment in the capital sum of $900, and I will allow him interest on the actual sums lent to the

Defendant at the rate of 15 per centum per annum, which I consider reasonable in all the circumstances of this case, from the dates on which they were lent up to the date of this judgment.

This appears to work out as follows:—

Interest on $500 for one month at 15% per annum
" " $400 " " " " " " "
" " $300 " " " " " " "
" " $200 " " " " " " " , and then

Interest on $900 from 7.5.40 to date of judgment at 15% per annum.

The resulting judgment debt will carry interest at the usual rate of 6 per centum per annum, and costs will follow the event.

Judgment accordingly.

Solicitors for plaintiff:—*Sisson & Delay.*

Solicitors for defendant:—*Mendis & Ahlip.*

IN RE LIM KENG KOOI, AN ADVOCATE AND SOLICITOR.

[Original Civil Jurisdiction (McElwaine, C.J., S.S., Terrell, Ag. C.J., F.M.S. and Carey, J.) May 21, 1941]

Advocates and Solicitors Ordinance S. 25—grossly improper conduct in the discharge of professional duty—breach of Rule 10 of the Penang Bar Committee Rules.

On an application by the Disciplinary Committee to call upon the respondent to show cause why he should not be struck off the Rolls of the Court or suspended from practice or censured or otherwise dealt with it was proved that he did not keep a separate clients' account with a bank and that he received moneys due to a client who was a beneficiary of an estate and that he improperly retained such moneys despite repeated applications by the guardian of the beneficiary and that he denied that he had received such moneys.

Held, (1) The rule requiring a Solicitor to keep a separate clients' account with a bank is a legal and not merely a moral obligation

(2) that the evidence was overwhelming to show that there had been misrepresentation and deceit on the part of the respondent, and that he had been guilty of grossly improper conduct.

Cases referred to:—

(1) *In re Sparks,* 17 C.B. (N.S.) 727.
(2) *Guilford v. Sims,* 13 C.B. 370.
(3) *In re a Solicitor,* 11 T.L.R. 169.
(4) *In re an Advocate and Solicitor,* 9 M.L.J. 253.

TRIAL.

Samuel & Gurcharan Singh for Disciplinary Committee.

Ong Huck Lim for Respondent.

Storr (Crown Counsel) for Attorney-General.

The judgment of the Court (McElwaine C.J. (S.S.), Terrell Ag. C.J., (F.M.S.) and Carey J.) was as follows:—

An order was made on the application of a Disciplinary Committee appointed under section 33A of the Advocates and Solicitors Ordinance calling upon the respondent to show cause why he should not be struck off the Rolls of the Court or suspended from practice or censured or otherwise dealt with.

The facts are not in dispute. Shortly those facts are:—

(a) Goh Gaik Kee by her will left $1,000.00 to Chung Kok Soon, the infant son of Lee Sau Yeng;
(b) Khoo Chong Yean a trustee of the will paid this $1,000.00 to the respondent on 28th August 1939 for payment to the beneficiary;
(c) The respondent retained this money until October 1940 when in consequence of inquiries made by the police he paid it;
(d) Messrs. Presgrave & Matthews were at all material times solicitors for Lee Sau Yeng the guardian of the infant beneficiary appointed by the will of the said Goh Gaik Kee;
(e) Messrs. Presgrave & Matthews made repeated applications to the respondent for payment of this $1,000.00;
(f) The respondent wrote letters to Messrs. Presgrave & Matthews which can only be construed as denials that the trustee had as yet paid the money.

It is only necessary to refer to a few extracts from the correspondence.

On September 6th 1939 Presgrave & Matthews wrote to the respondent "Kindly send us the sum of $1,000.00 referred to in our letter of 12th July last," to which respondent replied on 8th September "I shall be seeing my client during the week-end." In reply to a further letter of 13th September the respondent wrote "My client has been very ill. It will have to be a few more days before payment can be made". That the "client" was Khoo Chong Yean the trustee who had paid the $1,000.00 is apparent from a letter of the 19th September, "my client died on 16th", that being the date of the death of Khoo Chong Yean. On 3rd October the respondent wrote "Madam Tan Kim Heoh (the second trustee of the will) says that she will be in a position to make payment in two or three weeks' time". This woman was a nominal trustee who had none of the assets of the estate in